

REMARKS

Drawings

The Applicant thanks the Office for acceptance of the previously submitted drawings.

Double Patenting

The Office has issued a non-statutory obvious-type double patenting rejection based on the commonly-owned U.S. Patent No. 6,875,975 ('975). The Office alleges that at least one of the claims of the present application are either anticipated or would have been obvious over the claims of the '975 patent. It is noted that the present application is a Continuation-in-Part of the '975 patent. The Office also notes that a terminal disclaimer can be used to overcome the double patenting rejection.

It should be understood the filing of a terminal disclaimer to traverse a rejection based on nonstatutory double patenting is **not** an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Applicant agrees to file a terminal disclaimer to advance processing of the present application and traverse the rejection based on non-statutory double patenting over the cited issued U.S. Patent 6,875,975. The filing of this terminal disclaimer is not an admission of the propriety or merits of the rejection. The issued patent and the above-referenced application have common ownership to BAE Systems Information and Electronic Systems Integration, Inc. as noted in the recorded assignment reel/frame 012016/0668. Review and reconsideration is respectfully requested.

Claim Rejections – 35 USC § 103

The Office has quoted the statute from 35 USC 103(a), which is referenced herein. The Office has rejected claim 2, 4, 10, 11, 13-16 as being unpatentable over Faska (U.S. U.S. Pat. No. 6,875,975) in view of Choi (U.S. Pat. No. 5,485,015) and Tsai (Two-Dimensional Bi-Periodic Grating Coupled One- and Two-Color Quantum Well Infrared Photodetectors).

The Office acknowledges that “Claims 1, 3, 5-9, 17 and 19 are not rejected over art because they have support back to the original date of the parent application and therefore the “Faska” reference is not prior art, and also recite limitations which were not anticipated or obvious over the available art of record.” Applicant thanks the Office for this acknowledgment.

A terminal disclaimer is provided herein to remove the double patenting rejection for claims 1, 3, 5-9, 17 and 19, wherein these claims should be allowed. Claims 2-4 and 10 are dependent from Claim 1 and also should be allowed. Claims 18 and 20 are dependent from claim 17 and should now be allowed.

Claim 11 has been amended to include a feature of Claim 1 and Claim 17 wherein the pitch of the wells is about one wavelength of a center wavelength of interest, and should traverse the rejection. Claims 12-16 are dependent from claim 11 and should be allowed.

Applicant believes that all rejections have been traversed and allowance is respectfully requested for all claims.

Telephone Interview

If allowance of all claims is not granted, Applicant respectfully requests that the Office contact the under-signed to discuss any further remaining issues. The Applicant believes that a telephone discussion will likely expedite processing and result in allowance.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,

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